

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL B. DORSEY,

Plaintiff,

v.

GOVERNMENT OF CHINA, et al.,

Defendants.

No. 08-CV-1276 (PLF)

STATEMENT OF INTEREST OF THE UNITED STATES

The United States, by and through its undersigned counsel, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517,¹ and in response to the Court's letter dated October 22, 2008.² In this action, Michael B. Dorsey ("plaintiff"), proceeding pro se, seeks to hold the People's Republic of China ("PRC") and Citibank, N.A. ("Citibank") responsible for \$130 in alleged overcharges he paid to a teahouse in Beijing in August or September of 2007. Dkt. No. 1 at 3. Plaintiff's complaint seeks monetary damages and injunctive relief as to each defendant. Dkt. No. 1 at 5-7. In an attempt to serve the complaint, plaintiff appears to have

¹ Title 28, section 517 of the United States Code provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

² The Court's letter of October 22, 2008, invited the United States Department of State to submit a statement of its views concerning issues raised in the above-captioned case. On December 1, 2008, the United States filed a Notice of Potential Participation in the case, see Dkt. No. 9, and on December 11, 2008, the Court entered a Minute Order providing that "on or before December 31, 2008, counsel for the United States will file a notice advising the Court of whether or not it intends to participate in the case."

hired a process server who mailed a copy of the summons and complaint to the Chinese Embassy in Washington, D.C., and to a local Citibank banking center. See Dkt. Nos. 3-4 (Service Affidavits). The PRC, by letter dated September 16, 2008 (enclosed with the Court's October 22, 2008 letter to the Department of State), objected to this attempted method of service.

The United States takes no position at this time regarding the merits of this case. However, out of respect for the principles of international law concerning service of process on foreign states, to ensure that these principles are respected when the United States is sued in foreign courts, and to ensure that United States law in this area is correctly applied, the United States has a compelling interest in seeing that sovereign states are served properly before they are required to appear in lawsuits in our courts. Accordingly, the United States sets forth its position concerning the strict service requirements governing suits against foreign sovereigns under the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. §§ 1602-11.

DISCUSSION

The FSIA provides the sole basis for securing jurisdiction over a foreign sovereign in a United States court. See 28 U.S.C. § 1330; *Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 434 (1989); *Nemariam v. Federal Democratic Republic of Ethiopia*, 491 F.3d 470, 474 (D.C. Cir. 2007). Personal jurisdiction exists under the FSIA where there is both subject matter jurisdiction and proper service. See 28 U.S.C. § 1330(a)-(b); *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1548 n.11 (D.C. Cir. 1987) ("In other words, under the FSIA, subject matter jurisdiction plus service of process equals personal jurisdiction.") (internal quotation omitted). Federal Rule of Civil Procedure 4(j)(1) provides that § 1608 of the FSIA governs service on a foreign state and its political subdivisions, agencies and

instrumentalities. Section 1608(a) outlines several methods for serving process upon a foreign state or its political subdivisions, and § 1608(b) provides methods for service on agencies or instrumentalities of a foreign state.

Because the PRC is a “foreign state” as that term has consistently been defined by courts applying § 1608, see *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C. Cir. 2003), *Jacobsen v. Oliver*, 451 F. Supp. 2d 181, 198 (D.D.C. 2006) (collecting cases), service in this case is governed by § 1608(a). Section 1608(a) outlines, in hierarchical order, four alternative procedures for serving process on a foreign state. See 28 U.S.C. § 1608(a)(1)-(4). The first two procedures allow for service according to a special arrangement between the parties or “an applicable international convention on service of judicial documents.” *Id.* § 1608(a)(1)-(2). If neither of these methods is feasible, service of process may be accomplished under § 1608(a)(3),

by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.

If service cannot be made in that fashion within thirty days, it must be done under § 1608(a)(4), which provides for service

by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a)(3)-(4).

None of these procedures appears to have been followed here. The record does not reflect any special arrangement between the PRC and plaintiff, id. § 1608(a)(1), or that service was attempted through the only international convention that might be applicable to this case, id. § 1608(a)(2).³ Nor does the record indicate that plaintiff requested the clerk of court to mail the suit papers to the ministry of foreign affairs in the PRC, id. § 1608(a)(3), or asked the Department of State to complete service through diplomatic channels, id. § 1608(a)(4), or provided a Chinese translation of the summons and complaint, id. § 1608(a)(3) and (4). Mailing a copy of the summons and complaint to the Chinese Embassy does not satisfy any of the service requirements of the FSIA, much less the statutory mandate that the methods of service be pursued serially when necessary.

The D.C. Circuit requires strict compliance with § 1608(a). See Transaero, Inc. v. La Fuerza Aerea Boliviana, 30 F.3d 148, 153-54 (D.C. Cir. 1994); see also Baumel v. Syrian Arab Republic, 550 F. Supp. 2d 110, 113 (D.D.C. 2008). Unlike § 1608(b) (service on agencies and instrumentalities), which can be satisfied by technically faulty service “if reasonably calculated to give actual notice,” the analogous provision in § 1608(a) “says nothing about actual notice.” Transaero, 30 F.3d at 154. This distinction was intended in the statutory scheme. While the

³ The only such convention that might govern service of process in this situation is the Hague Service Convention, a multilateral treaty formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law. See Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (“Hague Service Convention”). Each signatory of the Hague Service Convention has established a Central Authority that receives the papers and effects service on the named party unless the Authority determines that such service would offend the nation’s sovereignty or security. Some states make such a determination when confronted with a lawsuit against the state itself. See id., arts. 3, 5, 13, and 15. Here, the record is devoid of any indication that plaintiff delivered service papers to the PRC’s designated Central Authority, the Ministry of Justice in Beijing.

Committee Report describes the provisions of § 1608(b) as “methods under which service shall be made upon an agency or instrumentality of a foreign state,” the Report explains that § 1608(a) “sets forth the *exclusive* procedures for service on a foreign state, or political subdivision thereof.” H.R. REP. NO. 94-1487, at 23-24 (1976), reprinted in 1976 U.S.C.C.A.N. 6604, 6623-24 (emphasis added); see also Transaero, 30 F.3d at 154 (noting same). Thus, substantial compliance would be insufficient to satisfy § 1608(a).

CONCLUSION

The United States has a strong interest in the enforcement of applicable rules governing service of process on sovereign states, including U.S. courts’ application of and strict adherence to the service requirements of the FSIA. Here, the record does not reflect that plaintiff’s attempt to serve the PRC satisfies those requirements set forth in § 1608(a) of the FSIA.

Respectfully submitted,

GREGORY G. KATSAS
Assistant Attorney General

JOSEPH H. HUNT
Director, Federal Programs Branch

VINCENT M. GARVEY
Deputy Director, Federal Programs Branch

/s/ Bryan Dearing
BRYAN DEARINGER
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, DC 20530
Tel: (202) 514-3489
Fax: (202) 616-8470

Counsel for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record, including

Citibank, N.A.
Tessa L. Frederick
Miles & Stockbridge PC
10 Light Street, Suite 1200
Baltimore , MD 21202
Email: tfrederick@milesstockbridge.com

I further certify that on the same date I sent to be mailed, by first-class mail, the foregoing to the following non-CM/ECF participants:

Michael B. Dorsey
1245 ½ Duncan Place, N.E.
Washington, D.C. 20002

The Embassy of the People's Republic of China
2300 Connecticut Avenue, N.W.
Washington, D.C. 20008

/s/ Bryan Dearing
BRYAN DEARINGER
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, DC 20530
Tel: (202) 514-3489
Fax: (202) 616-8470